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# SUPREME COURT OF THE UNITED STATES.

## No. 136.

THE UNITED STATES, APPELLANTS,

vs.

THE BRIG NEUREA, WILLIAM KOHLER, CLAIMANT.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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GIDEON, Print.

*Transcript of the proceedings in the United States district court for the northern district of California, in the suit of*

THE UNITED STATES OF AMERICA
vs.
THE BRIG "NEUREA."

Be it remembered, that on the second day of September, in the year of our Lord one thousand eight hundred and fifty-four, a libel of information was filed in the clerk's office of the U. S. district court for the northern district of California, by S. W. Inge, esq., U. S. dist. attorney, in behalf of the United States of America, against the Brig "Neurea," her tackle, apparel and furniture, for an alleged forfeiture, upon which libel the following subsequent proceedings were had, to wit:

*Libel for Information.*

In the district court of the United States for the northern district of California. In admiralty.

To the Hon. Ogden Hoffman, jr., judge of the district court of the United States for the northern district of California.

The libel of Samuel W. Inge, attorney of the United States for the northern district of California, who prosecutes on behalf of the said United States against the Brig "Neurea," and against all persons intervening for their interest therein, in a cause of forfeiture, alleges and informs as follows:

1. That Richard P. Hammond, esq., collector of the customs for the district of San Francisco, heretofore, to wit, on the thirty-first day of August, in the year of our Lord eighteen hundred and fifty-four, at the port of San Francisco, and within the northern district of California, on waters that are navigable from the sea by vessels of ten or more tons burthen, seized as forfeited to the use of the said United States the said brig "Neurea," being the property of some person or persons to the said attorney unknown.

2. That one Kohler, master of the said brig "Neurea," which is a vessel owned wholly or in part by a subject or subjects of the kingdom of Sweden, did on the first day of June, in the year of our Lord eighteen hundred and fifty-four, at the foreign port of Hong Kong in China, take on board said vessel two hundred and sixty-three passengers, which was a greater number of passengers than in the following proportion to the space occupied by them and appropriated for their use on board said vessel, and unoccupied by stores or other goods not being the personal luggage of such passengers, that is to say, on the lower deck or platform, one passenger for every fourteen clear superficial feet of deck, with intent to bring said passengers to the United States of America, and did leave said port with the same; and afterwards, to

wit, on the twenty-sixth day of August, in the year of our Lord eighteen hundred and fifty-four, did bring the said passengers, being two hundred and sixty three in number, on board the said vessel to the said port of San Francisco, within the jurisdiction of the United States, and that the said passengers so taken on board of said vessel, and brought into the United States as aforesaid, did exceed the number which could be lawfully taken on board and brought into the United States as aforesaid, as limited by the first section of the act of Congress approved February 22, 1847, entitled "An act to regulate the carriage of passengers" "in merchant vessels," to the number of twenty in the whole, in violation of the act of Congress of the United States in such cases made and provided, and that by force and virtue of the said acts of Congress in such case made and provided, the said vessel became and is forfeited to the use of the said United States.

And the said attorney saith, that by reason of all and singular the premises aforesaid, and by force of the statute in such case made and provided, the aforementioned vessel became and is forfeited to the use of the said United States.

Lastly. That all and singular the premises aforesaid are true, and within the admiralty and maritime jurisdiction of the United States and of this court.

Wherefore the said attorney prays the usual process and monition of this court in this behalf to be made, and that all persons interested in the said vessel may be cited in general and special to answer the premises, and all due proceedings being had, that the said vessel may be, for the causes aforesaid and other appearing, be condemned by the definitive sentence and decree of this court, as forfeited to the use of the said United States, according to the form of the statute of the said United States in such case made and provided.

S. W. INGE, *U. S. Dist. Att'y*,
Pr. JOHN A. GODFREY.

Endorsed:

Filed September 2d, 1854.

JOHN A. MONROE, *Clerk*.

*Monition.*

NORTHERN DISTRICT OF CALIFORNIA, *ss.*

The President of the United States of America, to the marshal of the northern district of California, greeting:

Whereas a libel of information for forfeiture hath been filed in the district court of the United States for the northern district of California, on the 2d day of September, in the year of our Lord one thousand eight hundred and fifty-four, by S. W. Inge, U. S. Attorney, on behalf of the United States of America, against the brig "Neurea," her tackle, apparel and furniture, for the reasons and causes in the said libel of information mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested

in the said brig or vessel, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had, that the said brig or vessel, her tackle, &c., may, for the causes in the said libel of information mentioned, be condemned and forfeited to the said United States:

You are therefore hereby commanded to attach the said brig or vessel, her tackle, &c., and to detain the same in your custody, until the further order of this court respecting the same, and to give due notice to all persons claiming the same, or knowing or having any thing to say why the same should not be condemned and forfeited, pursuant to the prayer of the said libel of information, that they be and appear before the said court, to be held in and for the northern district of California, on the 19th day of September instant, at eleven o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf; and what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Hon. Isaac S. K. Ogier, judge of the said court, at the city of San Francisco, in the northern district of California, this 2d day of September, in the year of our Lord one thousand eight hundred and fifty-four, and of our independence the seventy-ninth.

JOHN A. MONROE, *Clerk*,
By ALEX. M. SCHELL, *Deputy*.

S. W. INGE,
*U. S. Dist. Att'y*.

*Marshal's return on monition.*

In obedience to the within monition, I attached the brig therein described on the 2d day of September, and have given due notice to all persons claiming the same, that this court will, on the 19th day of September inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

W. H. RICHARDSON,
*U. S. Marshal*,
By J. E. TERRELL, *Deputy*.

Dated September 2d, 1854.

Endorsed:

Filed September 19th, 1854.

JOHN. A. MONROE, *Clerk*.

At a special term of the district court of the United States of America for the northern district of California, held at the court-house in the city of San Francisco, on Tuesday, the 19th day of September, in the year of our Lord one thousand eight hundred and fifty-four.

Present, The Hon. Isaac S. K. Ogier, district judge.

*Order of default, &c., on return of monition.*

THE UNITED STATES
vs.
BRIG "NEUREA."

The marshal having returned upon the monition in this cause, that he had attached the said brig, her tackle, &c., and had given due notice to all persons claiming the same, that this court would, on this day, proceed to the trial and condemnation thereof, should no claim be interposed for the same:

On motion of S. W. Inge, U. S. Attorney, proclamation was made for all persons having anything to say why the said brig should not be condemned, forfeited, and sold, to answer the prayer of the said United States. Geo. C. Bates appeared for claimants, and on motion was allowed two days to answer. On like motion it was ordered, that default of all parties not in court be taken.

Endorsed:

Filed September 19th, 1854.

JOHN A. MONROE, *Clerk.*

*Demurrer.*

District court of the United States for the northern district of California.

BRIG "NEUREA"
ads.
THE UNITED STATES.

And the said master, by Bates, Lawrence, and Hastings, comes and withdraws his answer heretofore filed, and demurs to the said libel, and states the following grounds of demurrer, viz:

1. That the said libel states no sufficient cause of condemnation of said ship.

2. Because the said libel states no offence against the laws of the United States.

3. Because the said libel does not aver that the excess of passengers carried or imported on said ship were so carried or imported on the lower deck of said brig, or the orlop deck thereof.

4. Because the facts stated in said libel do not constitute a violation of the passenger act of the United States of 1847, or any other law of the United States.

Wherefore the master of said brig prays judgment that said libel be dismissed, that this his demurrer be sustained, and that said brig be discharged from the custody of this court.

BATES, LAWRENCE, & HASTINGS,
*Att'ys for def't.*

It is hereby stipulated that the defendant in the above entitled cause may withdraw his answer filed therein, and demur to the libel.

San Francisco, Oct. 20th, 1854.

S. W. INGE,
*U. S. Att'y.*
Pr. A. GLASSELL.

Endorsed:

Filed October 20th, 1854.

JOHN A. MONROE, *Clerk.*

At a special term of the district court of the United States of America for the northern district of California, held at the court-house in the city of San Francisco, on Friday, the 20th day of October, in the year of our Lord one thousand eight hundred and fifty-four.

Present, Hon. Isaac S. K. Ogier, district judge.

*Decree on demurrer.*

THE UNITED STATES
vs.
BRIG "NEUREA."

This cause coming on to be heard on the demurrer heretofore filed in the above cause, and having been argued by the advocates for the respective parties, and due deliberation being had in the premises: It is now ordered, adjudged, and decreed by the court, that the said demurrer be sustained, and that the libel of information be dismissed at the costs of claimants.

ISAAC S. K. OGIER,
*U. S. Dist. judge.*

Endorsed:

Filed October 20th, 1854.

JOHN A. MONROE, *Clerk.*

In the district court of the United States, in and for the northern district of California.

*Stipulation as to value.*

THE UNITED STATES
vs.
BRIG "NEUREA."

It is hereby stipulated and agreed that said vessel exceeds the full value of two thousand dollars. This October 9th, 1854.

BATES, LAWRENCE, & HASTINGS,
*Proctors for the claimants of said vessel.*

Endorsed:

Filed October 25th, 1854.

JOHN A. MONROE, *Clerk.*

In the district court of the United States for the northern district of California. In admiralty.

THE UNITED STATES
vs.
BRIG "NEUREA."

*Notice of appeal to attorneys.*

SIR: Samuel W. Inge, the district attorney of the United States for the northern district of California, on the part of the United States, intends to appeal from the final decree of the court in this cause, this October 23d, 1854.

Respectfully, &c.,

S. W. INGE, *U. S. Dist. att'y.*
Pr. A. GLASSELL.

To LAWRENCE & HASTINGS,
*Proctors for claimants of said vessel.*

Service of the above admitted this 25th day of October, 1854.
(Signed) BATES, LAWRENCE, & HASTINGS.

Endorsed:
"Filed October 25th, 1854.

"JOHN A. MONROE, *Clerk.*"

In the district court of the United States for the northern district of California. In admiralty.

*Notice of appeal to clerk.*

THE UNITED STATES
vs.
BRIG "NEUREA."

SIR: Samuel W. Inge, the district attorney of the United States for the northern district of California, intends to appeal from the final decree rendered in this case, this October 24th, 1854.

Respectfully, &c.,

S. W. INGE, *U. S. Dist. att'y.*
Pr. A. GLASSELL.

To JOHN A. MONROE, *Clerk of said court.*

Endorsed:
Filed October 25th, 1854.

JOHN A. MONROE, *Clerk.*

*Appeal.*

THE UNITED STATES, appellants,
vs.
BRIG "NEUREA," WILLIAM KOHLER, claimant, respondent.

To the honorable the Supreme Court of the United States:

The appeal of Samuel W. Inge, district attorney of the United States for the northern district of California, in behalf of the United States, the above named appellants, respectfully showeth:

That on the second day of September, A. D. 1854, the said district attorney filed his libel of information in the district court of the United States, in and for the northern district of California, against the said brig "Neurea," her tackle, apparel and furniture, in a cause of seizure and forfeiture, alleging that said vessel was forfeited to the United States, for that a great excess of passengers was transported on board thereof from the port of Hong Kong, in the empire of China, into San Francisco, a part of the said United States of America, contrary to the form of the acts of Congress in such case provided.

That said vessel, being previously seized by the collector of the said port of San Francisco, was arrested by the United States marshal under process issued upon the said libel of information.

That said claimant, by his proctors, filed his demurrer to the said libel, and issue being thereupon joined, such proceedings were had in the said cause, that on the twentieth day of October, A. D. 1854, a final decree was made, and pronounced therein by the hon. judge of said district court, wherein it was in substance adjudged, that the said libel of information be dismissed; which said decree is, as the said district attorney believes, erroneous, and ought to be reversed.

Wherefore the said district attorney appeals from the whole of said decree of the said district court of the United States, to the Supreme Court of the United States, and respectfully prays that the said decree of the said district court, and the libel of information, demurrer, pleadings, stipulations, evidence, and proceedings in said cause, may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and review the action of the said district court, and every part thereof may be reversed, and a decree made overruling the said demurrer, with costs, or such other decree as to the said Supreme Court shall seem just.

(Signed) SAMUEL W. INGE,
*U. S. Dist. attorney.*
Pr. A. GLASSELL.

I acknowledge service of a copy of the within appeal, this October 26th, 1854. BATES, LAWRENCE, & HASTINGS,
*Proctors for claimants.*

Endorsed:
"Filed October 26th, 1854.
"JOHN A. MONROE, *Clerk.*"

*Citation.*

By the Hon. I. S. K. Ogier, judge of the district court of the United States for the southern district of California, acting judge for the northern district of California.

To WILLIAM KOHLER, *Claimant, &c.*

Whereas Samuel W. Inge, the district attorney of the United States for the northern district of California, in behalf of the United States, plaintiffs in a cause of forfeiture against the brig "Neurea," her tackle, &c., whereof the said Wm. Kohler is claimant, has lately appealed to the Supreme Court of the United States from a decree lately rendered in the district court of the United States for the northern district of California, made in favor of you the said William Kohler, claimant, dismissing the libel of information in this behalf, filed on the part of the said United States: You are therefore hereby cited to appear before the said Supreme Court at the city of Washington, on the 4th day of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of San Francisco, in the northern district of California, the sixth day of November, in the year of our Lord one thousand eight hundred and fifty-four, and of the independence of the United States the seventy-ninth.

ISAAC S. K. OGIER,
*U. S. Dist. judge.*

Endorsed:
Filed November 6th, 1854.

JOHN A. MONROE, *Clerk.*

District court of the United States for the northern district of California.

THE UNITED STATES
vs.
BRIG "NEUREA," WM. KOHLER, claimant.

Andrew Glassell, being duly sworn, deposeth and saith, that he served on Messrs. Bates, Lawrence, and Hastings, proctors and attorneys for said claimant, on the 26th day of October, a copy of the appeal, and on the 6th day of November, 1854, following, a copy of the citation filed in this cause with the clerk of the said district court, at the times aforesaid respectively, by delivering said copies of the said appeal and citation to the said proctors, and that he did the same in behalf and by the authority of Samuel W. Inge, district attorney for said district.

ANDREW GLASSELL.

Sworn to this 6th day of November, 1854, before me.

ALEX. M. SCHELL,
*U. S. Com'r.*

Endorsed:
Filed November 6th, 1854.

JOHN A. MONROE, *Clerk.*

United States district court, northern district of California.

I, John A. Monroe, clerk of the U. S. district court for the northern district of California, do hereby certify the foregoing sixteen pages, numbered from one to sixteen, both inclusive, to contain a true, correct and full transcript of the record of the proceedings in the suit of the United States of America against the Brig "Neurea," her tackle, &c.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, this ninth day of November, in the year [L. S.] of our Lord one thousand eight hundred and fifty-four, and of the independence of the United States of America the seventy-ninth.

JOHN A. MONROE, *Clerk*,
By ALEX. M. SCHELL, *Deputy*.